

UNITED STATES OF AMERICA,  
Plaintiff,  
VS.  
JEFFREY W. YOUNG, JR,  
Defendant.

March 31, 2023

LASHAWN MARSHALL, RPR  
OFFICIAL COURT REPORTER  
167 N. MAIN STREET - SUITE 242  
MEMPHIS, TENNESSEE 38103

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FRIDAY

MARCH 31, 2023

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**THE COURT:** Okay. Good morning, everyone.

**MR. PENNEBAKER:** Good morning. Your Honor.

**THE COURT:** I think everyone's got a copy of the latest version of the closing instructions. Hope y'all have made all the changes that we discussed yesterday, and my understanding is there are a few more edits that we have to do.

So Mr. Pennebaker, I'm assuming you'll let me know.

**MR. PENNEBAKER:** Yes, Your Honor. Starting on Page 16.

**THE COURT:** All right. Go ahead.

**MR. PENNEBAKER.** In one and two -- and this is a minor point. It's -- the text says a practitioner acting within the normal course. We suggest changing it to usual only because the term is later defined as the usual course.

**THE COURT:** All right. Go ahead.

**MR. PENNEBAKER:** In addition, Judge, the second element, the defendant -- that the defendant, knowing

1 that such prescriptions would not be, as opposed to were  
2 not.

3 **THE COURT:** Okay. Got that one.

4 **MR. PENNEBAKER:** And moving on. The -- on  
5 Page 18, Your Honor, there's an instruction that  
6 hydrocodone, oxycodone, and fentanyl are controlled  
7 substances.

8 **THE COURT:** Uh-huh.

9 **MR. PENNEBAKER:** The indictment charges  
10 specifically those drugs, but the antecedent qualifier is  
11 including Adderall, which we've heard a lot in this trial  
12 as a Schedule II controlled substance as well, and so we  
13 would ask that it be included in the definition of  
14 controlled substances.

15 **THE COURT:** Any objection to that, Mr. Ferguson?

16 **MR. FERGUSON:** Is that in the indictment?

17 **MR. PENNEBAKER:** The word is not specifically  
18 used, but it's conspiracy to distribute Schedule II  
19 controlled substances, including -- it lists the opioids,  
20 but it doesn't list Adderall in the manner and means. It  
21 talks all about, you know, distributing other controlled  
22 drugs like Adderall and carisoprodol and alprazolam,  
23 et cetera.

24 **MR. FERGUSON:** If I may just have a moment to  
25 look at the indictment real quick and see, find the

1 language.

2 **THE COURT:** Sure.

3 **MR. PENNEBAKER:** Yeah. And Adderall is also  
4 dextroamphetamine.

5 **MR. FERGUSON:** Count 1 says mixtures and  
6 substances contained as a detectable amount of Schedule  
7 II controlled substance, including hydrocodone,  
8 oxycodone, and fentanyl.

9 I'm going to object, but I understand their  
10 point on it's -- it's the clause that follows Schedule  
11 II, but I'd ask the Court to only instruct on the  
12 specifics that are included in the indictment.

13 **THE COURT:** Is that included in the manner and  
14 means, or is that the actual count?

15 **MR. FERGUSON:** I'm reading the actual count. It  
16 says Count 1. It's Paragraph 19: From in and about July  
17 2014, intentionally combined -- conspired to knowingly,  
18 intentionally, unlawfully distribute, dispense Schedule  
19 II controlled substances, including.

20 So it's Schedule II controlled substances comma  
21 including, and they list the three, but it's actually --  
22 that is language in Count 1.

23 **THE COURT:** Would you be asking that Adderall be  
24 added at all the other locations in the instructions?

25 **MR. PENNEBAKER:** It would just be the first

1 count, Your Honor, because of the conspiracy.

2           **THE COURT:** I'm not going to include it. We're  
3 going to go with the specifics that are in there. It's  
4 going to be hydrocodone, oxycodone, and fentanyl.

5           **MR. PENNEBAKER:** Thank you, Your Honor.

6           **THE COURT:** Sure.

7           **MR. PENNEBAKER:** So moving on to Page 20, the  
8 good faith instruction.

9           **THE COURT:** Go ahead.

10          **THE COURT REPORTER:** I'm sorry?

11          **THE COURT:** Good faith instruction on Page 20.

12          **MR. PENNEBAKER:** After doing some further  
13 research on this issue, the government would ask that  
14 recklessness be removed for a couple of reasons: One is  
15 that the deliberate ignorance instruction includes a  
16 sentence at the end that is carelessness, negligence, or  
17 foolishness on the defendant's part is not the same as  
18 knowledge and would not be enough to convict, which  
19 covers the terrain that this addition covers.

20               In addition, the recklessness is often defined  
21 as a conscious disregard of a high probability of the  
22 actus reus occurring. And so that's exactly what  
23 deliberate ignorance is. And deliberate ignorance is  
24 specifically identified as a -- as an appropriate means  
25 upon which to convict. So we would be fine with

1 including that sentence about carelessness, negligence,  
2 and reckless -- carelessness, negligence, and foolishness  
3 are not sufficient to convict twice: once in the good  
4 faith instruction and once in the deliberate ignorance  
5 instruction, just so --

6 **THE COURT:** Okay. Mr. Ferguson?

7 **MR. FERGUSON:** Well, I'm thinking in terms of  
8 the specific mens rea that we have in our criminal code,  
9 and so we're looking at what it takes under the Ruan  
10 decision. It's got to be intentional or knowing, which  
11 takes out the other two elements that are typical in a  
12 criminal case, which is recklessness and negligence.

13 I think that the sentence that you have in there  
14 is correct, and I think it should remain in there. I  
15 think that there's a difference between recklessness and  
16 deliberate indifference. There's -- the deliberate  
17 indifference is turning a blind eye. It's not  
18 necessarily the same as the mens rea of intentional,  
19 knowing, reckless, and negligence, so I'd ask that it  
20 remain in there, especially in light of the fact that the  
21 second sentence that the government talks about,  
22 carelessness, negligence, and foolishness, there's -- it  
23 doesn't seem to be the argument that it's incorrect, just  
24 that they seem to suggest it's already been said once.  
25 Why say it twice?

1 I think it's appropriate where it is, and when  
2 it's spoken to the jury, to fully evaluate -- put them on  
3 notice as to what their burden of proof is.

4 **THE COURT:** But their argument is with regard to  
5 recklessness at -- in essence, is a reckless disregard,  
6 and so recklessness could -- say that again,  
7 Mr. Pennebaker.

8 **MR. PENNEBAKER:** Yes, Your Honor. The  
9 recklessness is often defined as a conscious disregard of  
10 a high probability that an act is going to result in the  
11 criminal form of the behavior. And actually, post Ruan,  
12 we -- the Department of Justice has taken the position,  
13 for a number of reasons, that deliberate ignorance does  
14 survive the Ruan decision. There's nothing in Ruan that  
15 addresses, on point, that deliberate ignorance can't  
16 satisfy the mens rea requirement post Ruan.

17 Ruan really is a, you know, subjective intent  
18 versus "objective act, reasonable person" distinction.  
19 And so a -- recklessness involves that subjective  
20 disregard; Ruan does not touch that.

21 And as far as I'm aware, there's no case  
22 anywhere that -- and defense hasn't cited one that says  
23 that recklessness is no longer sufficient, I mean, at  
24 least in the -- in the iteration of recklessness that is  
25 deliberate ignorance. But that's -- that doesn't survive



1 Ruan. I haven't seen that in a case, Judge, and I don't  
2 know that defense has cited one.

3 **THE COURT:** Yes, sir?

4 **MR. FERGUSON:** It's an interesting argument, and  
5 it highlights the fact that if the government is going to  
6 say that recklessness -- that the sentence negligence and  
7 recklessness are not sufficient to convict, then I need  
8 to object, then, to the deliberate indifference  
9 instruction, because if they're -- if they're saying that  
10 they believe recklessness is what Ruan said -- and the  
11 Supreme Court spoke very clearly, that it's intentional  
12 or knowing, meaning they excluded all other mens rea.  
13 And if they're saying recklessness is the same thing as  
14 deliberate indifference, I'm -- right now I'm objecting  
15 to the jury instruction, deliberate indifference, which  
16 if they're arguing that's recklessness, then that's not  
17 the right jury instruction for this case. Supreme Court  
18 said recklessness and negligence are not sufficient, and  
19 if they're not sufficient, they should not be instructed  
20 to this jury. So --

21 **THE COURT:** You said the Supreme Court basically  
22 ruled that recklessness was insufficient?

23 **MR. FERGUSON:** If they say the -- that the mens  
24 rea for this case, when it comes to licensed  
25 professionals, is knowing or intentional -- by that

1 statement, that that's the element, that's the mens rea  
2 element -- then they've excluded all other mens rea  
3 elements, which negligence and recklessness are out. If  
4 the government's position is recklessness and deliberate  
5 indifference are the same thing, then I'm only left with  
6 the -- only thing I can do is object to the jury  
7 instruction of deliberate indifference.

8 **THE COURT:** I understand.

9 How do you respond to that, Mr. Pennebaker, that  
10 basically it is a knowing and intentional crime; doesn't  
11 go further to deal with recklessness? And understand  
12 what you're saying about recklessness is defined many  
13 times as.

14 **MR. PENNEBAKER:** Right. So just a basic fact of  
15 criminal law, that deliberate ignorance is -- does meet  
16 the knowing and intentional mens rea requirement of just  
17 about every crime. I mean, I think that's what -- that  
18 wasn't even -- whether or not deliberate ignorance --  
19 because deliberate ignorance is a conscious disregard.  
20 It -- literally, it goes inside of the mind of the  
21 defendant.

22 **THE COURT:** I don't have any problem with  
23 deliberate ignorance and why it's in there, and I think  
24 it's appropriate to leave it in there, but would it  
25 extend to reckless behavior?

1           **MR. PENNEBAKER:** Well -- and Your Honor, I think  
2 there's a strong argument for just keeping the words as  
3 they are, without this addition, because there's not  
4 really any confusion about whether or not -- I mean, the  
5 jury doesn't know the legal term "recklessness." They do  
6 know "foolishness"; they do know "carelessness"; they do  
7 know "negligence."

8           **THE COURT:** But that's not the issue, either,  
9 because I could give them a definition for recklessness.

10           **MR. PENNEBAKER:** Your Honor, I just -- I think  
11 that this -- this is -- this is more confusing than  
12 helpful, and I don't think that adding an additional --

13           **THE COURT:** Confusing to the jurors or to me?

14           **MR. PENNEBAKER:** I mean, confusing to everyone,  
15 because the -- there's a -- so that the -- the way that  
16 the instructions are laid out now, deliberate ignorance  
17 specifically excludes negligence, carelessness,  
18 foolishness as a -- as a satisfactory basis, when -- when  
19 the jury considers whether deliberate ignorance is -- can  
20 be a substitute on the facts of this case.

21           Everywhere else in the jury charge it says, in  
22 order to convict the defendant, you must find that the  
23 defendant knowingly and intentionally. Right? So  
24 that's -- it's not unclear as to what the mens rea is.  
25 It's just that there's a carve-out for deliberate

1     ignorance, just like there is a carve-out for good faith.  
2     And those -- I mean, those -- both of those instructions  
3     thoroughly define and thoroughly go into -- they're just  
4     not -- it doesn't -- the negligence and recklessness  
5     language that the defendant proposes is not additive to  
6     what's already a very clear jury instruction.

7             **THE COURT:** One last time, Mr. Ferguson, and  
8     I'll go ahead and rule on it. I think I know what I'm  
9     going to do with this.

10            **MR. FERGUSON:** I've --

11            **THE COURT:** No.

12            **MR. FERGUSON:** Sorry.

13            **THE COURT:** What I need to hear from you about  
14     is allegedly what they're saying. The way the drugs were  
15     distributed, it is almost in a reckless manner. Do you  
16     understand what I'm saying?

17            **MR. FERGUSON:** Yes, sir.

18            **THE COURT:** So why should recklessness be  
19     included in good faith, in the good faith instruction?

20            **MR. FERGUSON:** Because reckless is a mens rea  
21     that the Supreme Court specifically found is not  
22     adequate. The Supreme Court was very -- I mean, it's  
23     absolutely crystal clear. They weren't clear about a lot  
24     of things, but they're crystal clear about what the  
25     intent element is: knowing or intentional, which

1 excludes any other mens rea.

2 If we don't -- if we don't have a jury  
3 instruction that puts the jury on notice that those other  
4 men reas have been exclude, then they're not getting a  
5 full and fair jury instruction as to what the law is now  
6 after Ruan.

7 **MR. PENNEBAKER:** Your Honor, very, very briefly.  
8 I would like to see where the Ruan decision says the word  
9 "reckless" anywhere. I don't think it's in there. It  
10 just is not in there, and it's -- because -- and if it  
11 were in there, that would undercut all of the deliberate  
12 ignorance instructions across the United States of  
13 America because deliberate ignorance is a -- in the Venn  
14 diagram, deliberate ignorance falls wholly inside of  
15 reckless. So that -- I mean, there's just not a blunt  
16 instrument like that that says reckless is not sufficient  
17 for this crime.

18 It's -- there's a -- when there is a conscious  
19 disregard -- when the defendant understands the risk that  
20 he might be prescribing to an addict and does it anyway,  
21 right, that is -- and that is -- he doesn't want the  
22 result. He doesn't want that to be an addict. He  
23 doesn't -- you know, he's not wanting to harm the patient  
24 specifically, like a "knowing and intentional" type of  
25 harm would be, but he is aware of the high likelihood

1 that this is an addict and this is an outside-the-scope  
2 prescription. He says, I don't care; I'm doing it  
3 anyway.

4 That's absolutely a crime. That's reckless.

5 **MR. FERGUSON:** And that's not knowing and  
6 intentional. And that's what this is; it's a knowing and  
7 intentional crime.

8 **THE COURT:** But I think it is knowing and  
9 intentional. When you disregard everything that you know  
10 as far as a medical practice is concerned and you go  
11 ahead and prescribe these dangerous drugs, I think that  
12 is knowing and intentional.

13 **MR. FERGUSON:** But you're going in the wrong  
14 direction. We know that knowing and intentional also  
15 includes reckless. Reckless doesn't include knowing and  
16 intentional. So the fact that it's not knowing and  
17 intentional, that contains all the other lower mens reas,  
18 but it doesn't work the opposite direction. Government's  
19 getting an opposite-direction instruction, which is  
20 inappropriate.

21 **THE COURT:** I'm going to take a few minutes.  
22 And Mr. Ferguson, I'm going to give you an opportunity to  
23 find --

24 **MR. FERGUSON:** Oh, I didn't bring --

25 **THE COURT:** I'm sorry?

1           **MR. FERGUSON:** I didn't bring my computer; I'm  
2           so sorry. I can try it on my phone, but Ruan is so new,  
3           that there's --

4           **THE COURT:** I know that.

5           **MR. FERGUSON:** -- there's really -- there's no  
6           real help for Your Honor. You'd have to look at the law  
7           and apply -- what, basically, the Supreme Court has  
8           placed before this court is -- at this point, it's  
9           knowing and intentional.

10          **THE COURT:** Knowing and intentional is fully  
11          developed throughout the other instructions that I'm  
12          going to give. You've indicated before that basically  
13          Ruan eliminates this recklessness; that's what I'm  
14          concerned with. If there is language that can be  
15          construed in -- from Ruan to eliminate recklessness as a  
16          consideration, that's what I was going to give you an  
17          opportunity to do.

18          **MR. FERGUSON:** It's so new that we're cutting  
19          new ground here. And I think that's why we have to --  
20          have to really look at the Supreme Court and take into  
21          consideration what it specifically said, and what it  
22          specifically said excludes recklessness and negligence by  
23          the very fact that they were very specific about what the  
24          mens rea was and it excluded.

25          And I know the government's saying, well, they

1 didn't say that. Well, they did say that. When you say  
2 it's intentional, you are saying it's not reckless and  
3 negligence. It's -- because they -- they -- the whole  
4 case is raising the standard of the mens rea, not  
5 lowering the mens rea.

6 **MR. PENNEBAKER:** Your Honor, if I may -- if I  
7 may just respond to that very briefly. Looking at the  
8 good faith instruction that the defendant proposed that  
9 is -- the government has said, hey, that's fine if we  
10 want to do that. There's -- this isn't a pattern  
11 instruction or anything, but this -- I just want to read  
12 from this instruction where this is already covered,  
13 which is good faith is not merely a practitioner's  
14 sincere intention towards the people who come to see him,  
15 but, rather, it involves his sincerity in attempting to  
16 conduct himself in accordance with the standard of  
17 medical practice generally recognized and accepted in the  
18 state of Tennessee, an honest effort to prescribe  
19 substances for a patient's condition in accordance with  
20 the standard medical practice.

21 So that is -- that addresses the subjective  
22 intent of the defendant. It's saying -- and that really  
23 is -- it's a -- it's not -- it doesn't go all the way to  
24 just knowing and intentionally: I know and intend to  
25 issue outside the scope.



1           It's that there's a sincere effort being made.  
2   In other words, the defendant is not being reckless in  
3   prescribing these drugs. And, again, the government's  
4   not asking for an instruction that recklessness is  
5   sufficient, because that's what deliberate ignorance --  
6   deliberate ignorance carves out. If you're not going to  
7   find knowing and intentional, there is one means in which  
8   you can find this substitute mens rea, and that is this  
9   conscious disregard of a high likelihood that the result  
10   of your conduct will be the thing that we don't want.

11           But to, then, just throw this blanket  
12   "recklessness" term in there when -- if we instruct that  
13   recklessness is not sufficient and then the very next  
14   instruction is a form of recklessness, I mean, you're  
15   basically say you can't conclude based on recklessness,  
16   but then the next instruction says, but you don't have to  
17   find knowing and intentional if you find he was reckless  
18   in this way.

19           I mean, it's just -- it's incredibly confusing,  
20   and it's -- I mean, it really -- when the defendant is  
21   asking for a whole cloth instruction that is antithetical  
22   to anything on the books right now that any of us can  
23   point to and there's only this argument about Ruan going  
24   down this knowing and intentional path that doesn't  
25   address deliberate ignorance, it just -- why not stick

1 with what we know works instead of confusing the issue  
2 for the jury and for, frankly, all of us? I mean, I  
3 don't -- I don't understand how those two, the good faith  
4 and the deliberate ignorance instruction, would cohere if  
5 we blanketed recklessness like that.

6 **THE COURT:** I understand.

7 Yes, sir?

8 **MR. FERGUSON:** Sticking to what we've always  
9 done is what got us in front of the Supreme Court with  
10 Ruan in the first place. The Supreme Court heard the  
11 case that used to be subjective good -- subjective  
12 intent. Now it's objective, and it's intentional and  
13 knowing. I mean, it's as simple as that. And it needs  
14 to be in there, and the deliberate indifference needs to  
15 come out.

16 **MR. PENNEBAKER:** To resolve the circuit split on  
17 that issue that doesn't exist here.

18 **THE COURT:** I'm going to grant the government's  
19 request with regard to recklessness. I understand the  
20 Court of Appeals. Assuming there are convictions, the  
21 Court of Appeals will have an opportunity to take a look  
22 at this in several months.

23 We do have negligence included, Mr. Ferguson.

24 **MR. FERGUSON:** Okay.

25 **THE COURT:** I don't know if you want

1 carelessness and foolishness added there.

2 **MR. FERGUSON:** Let me . . .

3 **THE COURT:** Similar to what's in the deliberate  
4 ignorance.

5 **MR. FERGUSON:** If you would, Your Honor, please.

6 **THE COURT:** All right. I'll go ahead and add  
7 those in there.

8 And of course, I believe you are now objecting  
9 to the deliberate ignorance instruction; is that correct?

10 **MR. FERGUSON:** I made the objection, yes, and  
11 I'm still -- I'm maintaining that objection, using the  
12 same argument.

13 **THE COURT:** Okay. I understand. Same.

14 But I will add, and it'll read negligence,  
15 carelessness, or foolishness are not sufficient to  
16 convict.

17 Okay. Again, this is for you to decide. That's  
18 what we'll end up going with.

19 Okay. What's next, Mr. Pennebaker?

20 **MR. PENNEBAKER:** On Page 22, Your Honor.

21 **THE COURT:** Okay.

22 **MR. PENNEBAKER:** The second line in  
23 Subparagraph 3, a substance without a legitimate medical  
24 purpose outside the usual course, just for the same  
25 reason as earlier.

1           And I believe the same word needs to be inserted  
2     in the -- on the last line of the paragraph, starting  
3     with Count 8 through Count 14.

4           **THE COURT:**   Where was that last one?

5           **MR. PENNEBAKER:**   The last line of the paragraph  
6     in the middle of the page 22, beginning Count 8 through  
7     Count 14.

8           **THE COURT:**   Outside of the course of  
9     professional?

10          **MR. PENNEBAKER:**   Of the usual course, yes, Your  
11     Honor. "Usual" should be inserted in between -- outside  
12     of the "and the course."

13          **THE COURT:**   And so Subparagraph 3, outside the  
14     usual course --

15          **MR. PENNEBAKER:**   Of professional practice.

16          **THE COURT:**   So it was okay the way it was; is  
17     that what you're saying? Maybe I'm misunderstanding.

18          **MR. FERGUSON:**   If I can direct the Court,  
19     it's -- in the middle of the page, it says -- starting  
20     where it says Count 8 through Count 14.

21          **THE COURT:**   Right.

22          **MR. FERGUSON:**   The last line of that long  
23     four-line sentence, I think he's asking for -- where it  
24     says outside the course of professional practice --

25          **MR. PENNEBAKER:**   Outside --

1           **MR. FERGUSON:** -- he's asking for outside the  
2 usual course.

3           **MR. PENNEBAKER:** And then also in Line 3, that  
4 the defendant knowingly and intentionally distributed the  
5 substance without a legitimate medical purpose and  
6 outside the usual --

7           **THE COURT REPORTER:** I'm sorry; say that again.

8           **MR. PENNEBAKER:** Okay. At Line 3, that the  
9 defendant knowingly and intentionally distributed the  
10 substance without a legitimate medical purpose, outside  
11 the usual course of professional practice.

12           **THE COURT:** Okay. Maybe I -- you don't have an  
13 updated one. Mine says "usual."

14           **MR. PENNEBAKER:** Oh.

15           **MR. FERGUSON:** Mine says "usual."

16           **MR. PENNEBAKER:** Mine -- on Page 22?

17           **MR. FERGUSON:** The very last sentence on  
18 Page 22.

19           **THE COURT:** The last.

20           **MR. PENNEBAKER:** It's the -- it's the -- oh, I'm  
21 sorry. There's two Subparagraph 3s; that's what the  
22 confusion is. The very first Subparagraph 3 up at the  
23 top.

24           **THE COURT:** Oh, okay. I thought you -- you had  
25 said at the bottom.

1           **MR. PENNEBAKER:** I apologize.

2           **THE COURT:** No problem.

3           Okay. Top of the page, Subparagraph 3, medical  
4 purpose outside the usual course of professional  
5 practice.

6           We can do that.

7           Okay. Go ahead.

8           **MR. PENNEBAKER:** Page 23, the fourth line down  
9 from the top of the page has the same omission.

10          **THE COURT:** Okay. Got it.

11          **MR. PENNEBAKER:** And then --

12          **THE COURT:** The usual course?

13          **MR. PENNEBAKER:** Yes, sir. Yes, Your Honor.

14          Subparagraph 2, I think there should be -- it  
15 says that the defendant did so for the purpose of  
16 unlawfully dispensing or a controlled substance. I think  
17 it should be distributing or dispensing a controlled  
18 substance.

19          **MR. FERGUSON:** Your Honor, I think it may have  
20 just said distributing, because the indictment  
21 suggests -- well, you said dispensing.

22          **THE COURT:** Dispensing is in there.

23          **MR. FERGUSON:** The Count 15 alleges just --  
24 well, if I can read, and I may not be able to; I don't  
25 have my glasses on. I think it only alleges

1 distributing, but they were all -- either way.

2 **MR. PENNEBAKER:** It does. It does.

3 Okay. So then -- yeah, then it should just be  
4 distributing.

5 **THE COURT:** So we take out dispensing,  
6 unlawfully distributing.

7 It says "or" there.

8 **MR. FERGUSON:** Take that out, too.

9 **THE COURT:** Yeah, I'm going to take that out as  
10 well.

11 **MR. FERGUSON:** Thank you.

12 **THE COURT:** Okay. Anything else?

13 **MR. PENNEBAKER:** Then the next -- the bolded for  
14 the purpose of distributing a controlled substance --  
15 just because it's a defined term, I think unlawfully  
16 needs to be inserted before distributing.

17 **THE COURT:** Okay.

18 **MR. PENNEBAKER:** There was one other thing on an  
19 earlier page that I missed, Judge, and that is the old  
20 accomplice instruction, which is on Page 8.

21 **THE COURT:** Go ahead.

22 **MR. PENNEBAKER:** For the record -- and I don't  
23 think that this is material here, but just for the  
24 Court's information, Gutgsell is spelled G-U-T-G-S-E-L-L.  
25 We would not insist that --

1           **THE COURT:** Not a problem. Spell it again.

2           **MR. PENNEBAKER:** It's G-U-T-S-G-E-L-L.

3           **THE COURT:** Okay. We'll make the change  
4 throughout.

5           **MR. PENNEBAKER:** And then the last sentence of  
6 the first paragraph of that testimony of an accomplice  
7 that only references Dr. Alperovich, the because of his  
8 cooperation and testimony, Dr. Alperovich hopes, I think  
9 it should be Dr. Alperovich and Ms. Gutgsell because of  
10 their.

11           **THE COURT:** How long ago did she plead, and does  
12 she have a sentencing hearing pending? See, none of that  
13 came out. I don't know.

14           **MR. PENNEBAKER:** She does have a sentencing  
15 hearing pending, and I think she pled within the last  
16 two --

17           **MS. PAYERLE:** To three years.

18           **MR. PENNEBAKER:** Two, three years. I think it  
19 was --

20           **THE COURT:** Would have brought that out a little  
21 more clearly during the trial, but what's done is done.

22           So basically on the spelling, I put in an  
23 extra T.?

24           **MR. FERGUSON:** Yes, sir.

25           **THE COURT:** Okay.



1           **MR. PENNEBAKER:** And the S and the G are  
2 flipped.

3           **THE COURT:** I thought she spelled it when she  
4 got up there.

5           Okay. Well, I'll adjust that language  
6 accordingly.

7           **MR. PENNEBAKER:** Oh, actually, Judge, I'm sorry.  
8 It's actually spelled both ways in here. There's -- I'll  
9 stop. It's -- it never ceases to confound any of us.

10          **THE COURT:** And I'll add Ms. Gutgsell in that  
11 last sentence.

12          Because of their corporation?

13          **MR. PENNEBAKER:** Yes, Your Honor.

14          **THE COURT:** They hope to receive.

15          Okay.

16          **MR. PENNEBAKER:** And that's it from the  
17 government, Your Honor.

18          **THE COURT:** Okay. Thank you.

19          Mr. Ferguson?

20          **MR. FERGUSON:** I'm good.

21          **THE COURT:** Okay.

22          **MR. FERGUSON:** Yes, sir.

23          **THE COURT:** All right. My clerk was listening  
24 in. She'll make all those changes for the final copy  
25 that will go to the jury. I don't know if y'all want

1 additional hard copy or just have them sent to you  
2 electronically.

3 **MR. FERGUSON:** I would take a hard copy, if I  
4 could.

5 **THE COURT:** Okay.

6 **MR. PENNEBAKER:** We'll take --

7 **THE COURT:** Before or after closing?

8 **MR. FERGUSON:** Before I argue.

9 **THE COURT:** Okay. Then we'll take a brief  
10 recess. We'll go ahead and get those copies out to  
11 everyone.

12 All right. Okay. Recess.

13 (Recess at 10:05 a.m. until 10:27 a.m.)

14 **THE COURT:** Okay. I'm assuming we're ready for  
15 the jury?

16 **MR. FERGUSON:** Yes.

17 **MR. PENNEBAKER:** Yes, Your Honor.

18 **THE COURT:** Okay. Bring them in, please.

19 (Jury in at 10:28 a.m.)

20 **THE COURT:** Okay. Folks, last push at this  
21 time. We've worked through everything now, and so we're  
22 ready to go ahead and proceed with the closing arguments.

23 Remember early in the case, I told you that the  
24 government would argue first. Defense will have a full  
25 opportunity to argue. And assuming they do, the

1 government will have the last -- what we call the  
2 rebuttal argument, that being because they had that  
3 burden of proof.

4 I've got the jury instructions, so I'm ready to  
5 go, once we conclude the arguments in the case. And then  
6 it will be up to you, however long deliberations are  
7 going to take. Okay. Let's go ahead and get to it.

8 So I'm going to turn to the government. You may  
9 proceed.

10 **MS. PAYERLE:** Thank you, Your Honor.

11 All right. Well, good morning, ladies and  
12 gentlemen. It's been an action-packed week, and now it  
13 is time to tie it all together and to show you what the  
14 government believes this evidence amounts to, to give you  
15 a framework for sorting through it, and then to get you  
16 to the important work of deciding this case.

17 We started -- Mr. Pennebaker here started with  
18 sex, fame, money, and that's where we've ended up.  
19 You've seen, in the videos, in the "Sail Away with the  
20 Rock Doc" advertisement, in the texts and the testimony,  
21 that the defendant Jeffrey Young -- he was obsessed with  
22 these things, desperate for people to pay attention to  
23 him.

24 He might have done anything to be the womanizer,  
25 the rock star, the big fish in the small pond, but it

1 turns out he only had to do one thing: prescribe. He  
2 had to pick up his pen and his prescription pad and  
3 prescribe drugs, and not just any drugs, the most  
4 dangerous and addictive drugs that are legal to  
5 prescribe.

6 He wanted everyone's attention: beautiful  
7 women, rock stars, club owners, tattoo artists, everyone  
8 who was anyone. But he quickly learned it was not his  
9 winning personality or his tattoos that got their  
10 attention, it was the pills.

11 To his so-called fans, the thing that made  
12 Jeffrey Young special was that he had the power to get  
13 them drugs. He had the power to get them high. And  
14 if you want more detail on this, I do encourage you to  
15 page through those text message summaries that Special  
16 Agent Scales went over. There's a lot of them in  
17 evidence, about 20, more than just the highlights that he  
18 covered on the stand. And you'll see over and over again  
19 how Jeff Young used that power of the prescription to get  
20 what he wanted.

21 You'll see this kind of barter system that I'm  
22 talking about. And I want to just walk through one  
23 example of how this played out so that you can see it and  
24 the rest of them for yourself. So we're going to take a  
25 closer look at Exhibit 76 and the story, if you will, of

1 Cyndal Story.

2 In the first few pages -- I won't go through  
3 them here, but you can read about how a man named  
4 Jonathan Morris is playing matchmaker. He tells Young  
5 that she's cool, that she hasn't gotten laid in a while,  
6 and he'd let it slip that her ex was abusive. They plan  
7 a double date to set them up: dinner, followed by a  
8 night in Jeff Young's hot tub. Cyndal flakes. Jeff  
9 Young and Jonathan Morris agree, bullet dodged. Jeff  
10 Young even says, quote, well, her loss. I can tell by  
11 her response that she wasn't that in to me.

12 But on Page 4 of that exhibit, we finally see  
13 here Jeff Young and Cyndal Story connect. He asks for a  
14 date. She agrees, but first, she's going to meet him at  
15 his clinic. Jonathan goes with her, and they're both  
16 texting Jeff Young from the waiting room. You'll see the  
17 end of text messages, the chatter about the front desk.

18 So on this -- on this slide that you're looking  
19 at, Jeff Young sends this text to Cyndal Story: This  
20 could get interesting, with a little devil emoji.

21 And then you'll see the grayed-out spot there  
22 where he prescribes her drugs, a pretty modest dose of  
23 hydrocodone, about 5 milligrams, and a little bit of  
24 Xanax. And this, folks, is how the negotiation begins.

25 You'll read through and see how, over the next

1 couple of months, they keep each other on the hook: Jeff  
2 to see how much attention he can get from Cyndal and  
3 Cyndal to see how many powerful drugs she can get from  
4 Jeff.

5 Let's look at a few days later. Cyndal reaches  
6 out and asks for a favor. Hydrocodone is just not  
7 helping at all. She wants Percocet, 10 milligrams.

8 You learned in this trial that Percocet is  
9 oxycodone, and it's 1.5 times stronger than hydrocodone,  
10 and she wants 10 milligrams of it, not the 5 he initially  
11 prescribed.

12 And also look here. She doesn't want to see  
13 him. She has to work. She has her kids. Some excuses.  
14 She's not interested. She asks if she can send Jonathan  
15 over to pick up a prescription. Jeff Young responds by  
16 playing hard to get: Sorry. State rights say I can't  
17 write anything within 30 days. You have to be seen in  
18 the office.

19 He adds: It's bullshit, but it's the law.

20 Well, maybe it's the law, but it's certainly not  
21 Jeff Young's practice.

22 Looking at the other text messages in the  
23 exhibits from about 74 to 92, to his buddies Chad Newsom,  
24 Ben Elston, and others, he prescribes outside the office  
25 all the time. But a women, Cyndal Story, she has to come

1 see him.

2 Ms. Story pushes back: Is there nothing you can  
3 do without me coming in?

4 Jeff Young holds firm: Unfortunately.

5 If she wants her drugs, she comes into the  
6 office, and he's not even shy about why.

7 Same day, same conversation.

8 I'll let you-all read it.

9 And later: I just need you to open up and  
10 actually keep a date for once. That would keep -- be a  
11 decent start.

12 The next day, Ms. Story capitulates, goes into  
13 the office, and Jeff Young prescribes exactly what she  
14 asked for, Percocet, 10 milligrams. Even though he  
15 claimed he can't prescribe, quote, anything within 30  
16 days, he made an exception for her here, prescribing  
17 another 90 opioid pills only seven days after this  
18 negotiation began.

19 A few weeks go by. Cyndal Story apologizes:  
20 Golly, I wasn't in touch.

21 She has a sob story.

22 Jeff Young asks: Let me know if I can do  
23 anything to help.

24 And surprise, there is.

25 I have an appointment with you next Monday, but

1 could you see me sooner?

2 She wants to be seen a week early, and Jeff  
3 Young agrees.

4 Now, I won't put them all up here, but you will  
5 see in the subsequent text messages that he prescribes  
6 her something, but she can't get it filled. She tries  
7 another pharmacy. It still doesn't work.

8 Jeff Young says: We've exceeded the state limit  
9 for any controlled.

10 But yet, sometime the next day, he prescribes  
11 her 91-milligram Xanax. And then, again, radio silence,  
12 until she writes back. She's got a whole plan about how  
13 he can get her more drugs. She's getting pushier and  
14 pushier: Just give me another one of the percs per day  
15 and then would still be less milligrams. Please do four  
16 10s a day instead of three.

17 Oh, and then she -- at the bottom there, she  
18 remembers. She still has that one-week-from-Monday  
19 appointment on the 8th. Can she come in then?

20 Jeff does his part: Sure. Come see me.

21 And on August 8th, she leaves for a prescription  
22 for oxy 20s, now double the dose of oxy from the last  
23 time. And they got rid of that pesky acetaminophen.  
24 We're now on to pure oxy.

25 You'll see in the text messages that Jeff,



1 again, has to intervene at the pharmacy, again, to be  
2 sure they fill. But he does intervene, and they do. And  
3 guess what? Radio silence until she needs them again.  
4 And it goes on like this for a few months. The stakes  
5 keep getting raised by either side: Jeff looking for  
6 more attention; Ms. Story looking for more drugs.

7 So here, we have Ms. Story: Can I ask a favor?  
8 I have an appointment next Monday. I want to come in  
9 this week instead.

10 Jeff Young asks for naked pictures.

11 The next month, Ms. Story needs to come in early  
12 again, and then also she thinks she has a sore throat.

13 Jeff Young responds with innuendo, and all the  
14 while, Jeff Young is getting warnings.

15 Cyndal's ex-boyfriend says: Jeff, you always  
16 been cool as a fan, but my girl for eight years is an  
17 addictive person. Cyndal Story. You write her any more  
18 scripts, you're going to kill her, man. She talked about  
19 suicide the other night because she was coming off.  
20 You're giving her enough to kill a horse, as many as she  
21 is eating, and there's nothing wrong with her. Thanks.  
22 And, again, do not contact her on messenger and do not  
23 write her any more stupid scripts.

24 Later she [sic] says he's -- she's running  
25 around selling them like some kind of drug dealer and

1 then runs out trying to buy them from everyone she can,  
2 and it's driving me crazy.

3 What does Jeff Young do? He prescribes again  
4 and again, and not just any drugs but what Dr. Tricia  
5 Aultman pointed out are very high doses of oxy,  
6 oxycodone, and Xanax, 20-milligram pure oxy pills with a  
7 very high street value. One milligram times 90 Xanax is,  
8 again, a lot of pills, again, with a high street value.

9 Until finally the negotiation comes to a head.  
10 Up until now, Cyndal Story has kept Jeff Young at a  
11 distance, but no longer. The fact is, knowing that she  
12 was an addict and a drug dealer didn't matter to Jeff  
13 Young. He was more bothered by the fact that she wasn't  
14 putting out, and he decides he wants his payoff.

15 You can read for yourself there's one more last  
16 negotiation. Cyndal needs another favor, another early  
17 appointment. Stomach bug.

18 Now, after the testimony in this case, we can  
19 all understand that she's just in withdrawal. Jeff Young  
20 has her where he wants her. She's in withdrawal. She's  
21 in pain. She needs those drugs, and he tells her what  
22 she needs to do to get them.

23 The negotiation continues for a while. She  
24 wants a first date. He, quote, calls bullshit.

25 Folks, as you read through this in the jury

1 room, you'll see that she manages to put him off again  
2 until after Christmas. She says: I'm busy. I got  
3 plans. I need to go till after Christmas.

4 Jeff is skeptical. He tells her, quote, I'll  
5 believe it when I feel it.

6 But he decides to take the chance. He pushes  
7 here to commit to the after-Christmas date. She does,  
8 and they say it's a deal. She gets her oxycodone, plus a  
9 little extra, some tramadol. But then you see there's  
10 nothing else. It looks like Cyndal Story didn't keep her  
11 date after all, and Jeff Young stopped prescribing.

12 I'm highlighting this exchange between Jeff  
13 Young and Cyndal Story, or people connected to her, as an  
14 example of a clear sex-for-drugs exchange, but there are  
15 plenty of other negotiations between Jeff Young and his  
16 special friends that unfold in much this way, and those  
17 are in the exhibits.

18 So in the interest of expediency, we didn't read  
19 through them all in trial, but they're there. And if you  
20 need or want more details about these relationships, look  
21 at Exhibit 74 through 79, and they'll be available to you  
22 as evidence.

23 Now, I'd like to zoom back out for a moment and  
24 get back to your job, which is reaching a verdict. I  
25 want to talk about how this behavior translates into the

1 crimes that are charged in the indictment. Of course  
2 you've seen plenty of evidence that Jeff Young was  
3 playing an elaborate game of make-believe. He pretended  
4 he was cool; he pretended he was famous; he even  
5 pretended he was a musician. But lots of people delude  
6 themselves a least a little bit to follow their dreams.  
7 This case isn't about that. The crime here is that he  
8 pretended he was practicing medicine, but the drugs that  
9 he was prescribing were very, very real.

10 You see, he rented this building and built this  
11 business, Preventagenix, on a business model.

12 Daniel Rogers: He was a quick witness, but he  
13 told you the business model of Preventagenix was bringing  
14 people in who wanted narcotics because they would come  
15 back every month.

16 Jeff Young was so far outside the scope of  
17 professional practice, that once law enforcement closed  
18 his doors, there was no one out there -- almost no  
19 one would prescribe to his patients.

20 Tricia Stansell, his former patient, told you  
21 that when Preventagenix's door closed with the law  
22 enforcement action, she couldn't find anyone else to give  
23 her prescriptions, and so she turned to street drugs.  
24 You'll remember she told you it was that situation that  
25 finally made her realize that she was hopelessly

1     addicted. Why didn't she know it before? Because the  
2     man that she believed to be her medical provider never  
3     told her, never helped her with it, didn't even tell her  
4     that the fentanyl he was prescribing her was an opioid.  
5     You might remember her story about shutting herself in  
6     her room for five days with nothing but a bible and a  
7     television and hoping she didn't die. That is the  
8     position that Jeff Young put her in.

9             But while Preventagenix was still in operation,  
10    folks, people came from all over Tennessee to get drugs  
11    from him, from Memphis, Nashville, Madison, Lauderdale,  
12    Carroll, and Benton, from Fayette, Tipton, Haywood,  
13    Chester, and Decatur Counties and beyond.

14            Kristie Gutsell, the office manager, and Daniel  
15    Rogers told you that the people who wanted controlled  
16    substances came back month after month for the one-month  
17    follow-ups you saw in Exhibit 8. We're going to see that  
18    later. And you saw that these folks had insurance, which  
19    Jeff Young billed.

20            Natalie Seabolt. Nurse Natalie Seabolt: You  
21    remember she showed you the charts and the data? She  
22    told you that Medicaid is a taxpayer-funded healthcare  
23    program. These people weren't getting healthcare; they  
24    were getting drugs. No matter. Jeff Young was billing  
25    Medicaid for it anyway. He billed Medicaid to the tune

1 of about \$4 million.

2 And the business model worked. In the two-year  
3 period charged in the indictment, Jeffrey Young at his  
4 clinic Preventagenix provide -- excuse me -- prescribed  
5 more than 1.3 million controlled substances into his  
6 community, increasing his prescriptions and his patient  
7 populations month after month, and pulling in more than a  
8 half million dollars in Medicaid money alone, plus  
9 whatever he collected in cash and other insurance.

10 But ladies and gentlemen, even if it happens in  
11 a pretty building, dealing drugs is still illegal. It's  
12 illegal for everyone, even people with a pen and a  
13 stethoscope. And that is why we're all here.

14 You have one job today, and that's to fill out  
15 this form, the verdict form. It doesn't actually look --  
16 the formatting is a little different, but it contains --  
17 it looks like this; I've got it here. But it contains  
18 all the information, and you might just be able to see  
19 that a little bit better on the screen.

20 This verdict form here that I'm going to show  
21 you, it has 15 questions on it -- okay? -- one for each  
22 crime that Jeffrey Young is charged with. And you have  
23 to decide whether the government has proven these crimes  
24 beyond a reasonable doubt.

25 So as expeditiously as possible, my job right

1 now is to take you through this form, to explain to you  
2 why the evidence leads, beyond any reasonable doubt, to a  
3 checkmark next to guilty on each of these counts.

4           So let's dive into Count 1, conspiracy to  
5 distribute controlled substances. All right. Put away  
6 your tinfoil hats and talk of conspiracy theories.  
7 Conspiracy is a real thing in the law, and it boils down  
8 to an agreement. If Jeff Young agreed with one or more  
9 people to distribute these controlled substances  
10 unlawfully, then he's guilty of Count 1.

11           Well, when I say "unlawfully," what do I mean?  
12 It's the second bullet on this slide. You'll probably  
13 remember that mouthful I had to keep saying over and over  
14 again with Dr. Aultman: A prescription for narcotics is  
15 an unlawful prescription or prescription for controlled  
16 substances is an unlawful prescription if it's issued not  
17 for a legitimate purpose by a practitioner acting within  
18 the usual course of professional practice in the state of  
19 Tennessee.

20           So put more simply -- and I'll use the shorthand  
21 throughout the closing so I don't have to keep saying  
22 that over and over again -- when he wrote the  
23 prescriptions he was writing, he was supplying drugs to  
24 dealers and addicts, not practicing medicine.

25           So what about the term "agreement" at the first

1 bullet point there? Well, the thing is -- Jeff Young --  
2 he couldn't do this alone. He needed the assistance of  
3 office managers. Kristie Gutsell told you that she  
4 signed on to help Jeff Young, understanding what he was  
5 doing was wrong. She gave him money to keep his clinic  
6 open. She -- she helped him day to day. Dr. Alperovich  
7 lied to the medical board, and Dr. Rudin, if you remember  
8 him from early in the trial -- he didn't testify, but he  
9 was talked about -- Jeff Young's buddy, he stayed in  
10 Chicago -- he was -- served at -- as the sort of last  
11 supervising physician through most of 2016, cashing his  
12 check while Jeff prescribed.

13 And the judge will need -- will instruct you.  
14 These people didn't need to sort of sit down and enter  
15 into a contract to engage in illegal drug dealing or sit  
16 in a back room and, you know, conspire to commit a crime.  
17 They -- criminal organizations rarely sort of formalize  
18 these things.

19 Conspiracies happen through action. People know  
20 and understand what is going on in this conspiracy. They  
21 understand that there is illegal activity taking place,  
22 and they help each other. They join; they agree to join;  
23 they work together to an unlawful purpose.

24 Okay. That's Count 1, conspiracy.

25 Now we're going to count -- skip all the way to



1 Count 15, which is at the end of your verdict form, and  
2 this is a crime that someone commits when they knowingly  
3 open, lease, or maintain a place, like the Preventagenix  
4 clinic, for the purpose of distributing a controlled  
5 substance.

6 So the fact that Jeff Young here had a fancy  
7 building doesn't actually make the drug dealing any  
8 better; it's actually a separate crime. And it was. He  
9 used that building to bring patients in the door, to  
10 collect cash from them, to give them the drug test that  
11 he ignored but that he used to paper the file. He used  
12 the back door of that building to welcome in the likes of  
13 Ben Elston, Jay Green, or any one of the dozens of women  
14 that he was sleeping with or trying to sleep with.

15 Kristie Gutsell told you that 80 percent of the  
16 patients, the people that walked in and out of those  
17 doors at Preventagenix, were getting controlled substance  
18 prescriptions. And even for the so-called regular  
19 patients, the ones that weren't beautiful or famous.

20 Daniel Rogers: You remember him? He told  
21 you -- he told you about Jeff Young's business motto:  
22 Paying patients make the money. Pain patients pay, and  
23 they show up every month.

24 Two different witnesses told you around 80  
25 percent of Jeff Young's business at Preventagenix was

1 based on his controlled substance prescriptions. And  
2 every time they'd walk in the door, Jeff Young would bill  
3 their insurance. And that's Count 15.

4 So we've talked about Count 1 and Count 15, the  
5 first and last counts: conspiracy and maintaining a drug  
6 premises. That kind of covers a range of dates, which  
7 you'll see in the indictment: 2014 to 2017.

8 But in addition to these overarching counts, the  
9 indictment charges him with 13 specific instances of  
10 illegal prescribing for which the evidence proves that he  
11 is guilty, and these are Counts 2 through 14. And you'll  
12 be asked to reach a verdict on each of these counts as  
13 well.

14 So the first six of those counts, Numbers 2  
15 through 7, have an extra element. So the -- in other  
16 words -- so for 2 through 14, we're talking about  
17 distribution. And what you have to find there -- what  
18 the government must prove beyond a reasonable doubt is  
19 that the defendant in these cases knowingly, on those  
20 instances, or intentionally distributed oxycodone and  
21 hydrocodone, knowing, at the time of the distribution,  
22 that it was controlled and knowingly or intentionally  
23 distributing it without a legitimate medical purpose  
24 outside the course of professional -- the usual course of  
25 professional practice. Okay. So for each of those,

1 that's what the -- that's what the government must prove  
2 beyond a reasonable doubt.

3 For Counts 2 through 7, there is an extra  
4 element, and that is because those counts charge  
5 Mr. Young with individual distributions to a pregnant  
6 woman, Hope Rogers. And so for those counts, you also  
7 have to find that the defendant knew that Hope Rogers was  
8 pregnant. So because Counts 2 through 7 deal  
9 specifically with Hope Rogers, I want to spend a little  
10 bit of time on her.

11 This is Hope Rogers; you may remember her. She  
12 was the witness who was in custody. She testified in her  
13 red jumpsuit, and she's the one who was pregnant when  
14 Jeff Young prescribed her Xanax, alongside oxycodone and  
15 hydrocodone, in ever increasing doses, so many, that  
16 [REDACTED], her daughter, was born with opioids in her  
17 system and spent days in the NICU.

18 Counts 2 through 7 accuse Jeffrey Young of  
19 prescribing -- so what we're going to do now is just turn  
20 to those counts, let you see what they are. So the way  
21 this is structured is each count is associated with an  
22 approximate date of the distribution, plus the drug that  
23 was distributed. And for each of those counts, there's a  
24 line on your verdict form where you have to indicate  
25 guilty or not guilty or in this case -- yep, indicate or

1 maybe circle; in some way, indicate.

2 All right. Let's take a look at Hope Rogers.

3 All right. Let's start at the beginning. For this,

4 we'll be looking at -- this is Exhibit 101 and

5 Exhibit 122. Those are the exhibits you'll have with

6 you. 101 is the entire patient file, and all the

7 prescriptions compiled together are at Exhibit 22.

8 So walking in the door, Tricia Aultman walked

9 through her patient file and showed how painfully obvious

10 it was that she was a drug seeker. Her diagnoses didn't

11 make sense; they contradicted her records. They

12 contradicted each other, but that didn't matter. Jeff

13 Young discontinued her codeine, that DC Tylenol 3, and he

14 put her on hydrocodone and Klonopin. At this point, Hope

15 Rogers is not pregnant yet, but Jeff Young is already

16 over the line.

17 Dr. Tricia Aultman told you that putting her on

18 a powerful opioid at this point made absolutely no sense

19 from a medical perspective. There was nothing in her

20 file to suggest a legitimate medical purpose for these

21 drugs. And by the way, Hope Rogers, herself, told you

22 that. These conditions haven't changed. Her body hasn't

23 change. She still has some pain in her wrists, but she's

24 been off the drugs for years. She says: I definitely

25 didn't need them.

1           What was actually wrong with Hope Rogers,  
2           according to both Tricia Aultman, who's never met her,  
3           and Hope Rogers, herself, was that she was addicted from  
4           the -- to the medication, a fact that was painfully  
5           obvious from the very beginning. But Jeffrey Young  
6           described anyway because these prescriptions gave him  
7           access to a new, devoted, young, attractive, new patient.

8           Count 2 is the prescriptions from March 5th, a  
9           couple months later. Now, what information does Jeffrey  
10          Young have? Well, at her February visit, she's just told  
11          him that she found out she was pregnant, so now he's  
12          prescribing this already unlawful Percocet that has no  
13          medical purpose to a woman that he knows is pregnant.  
14          And that is why he's guilty of Count 2.

15          At Count 3, on March 25, just 20 days later, he  
16          has even more information. She's vomiting  
17          uncontrollably. She has blood in her bowel movements,  
18          diarrhea. These are all symptoms of withdrawal. So what  
19          does he do? He switches her to hydrocodone. After all,  
20          it's been less than 30 days since her last visit, so  
21          she's going to have a hard time filling a prescription  
22          from a Percocet.

23          Tricia Aultman explained that this early  
24          prescription by 10 days effectively upped her dose  
25          because she's still got 10 days, in theory, of her

1 Percocet prescription left. So if she were taking these  
2 pills, as Jeff Young prescribed them, for this 10 days,  
3 she's on six pills a day: three of hydrocodone and three  
4 of oxycodone. No matter. Jeff Young's now switching her  
5 drugs just to avoid her getting flagged at the  
6 pharmacies, and he keeps prescribing.

7 A month later, Jeff Young has even more  
8 information. You see, Hope Rogers has failed her drug  
9 screen. She's taking more drugs than Jeff Young is  
10 prescribing.

11 By now, you'll recognize Jeff Young's  
12 handwriting on this document. I don't know what it says,  
13 but you'll recognize the handwriting. He's seen this  
14 document. He doesn't care.

15 On her April 23rd patient note, there's another  
16 reminder in the chart that she's pregnant, and that  
17 brings us to Count 4.

18 On April 23rd, Jeff Young not only prescribes  
19 more inappropriate hydrocodone, but he adds Xanax.  
20 That's April 23, 2015. April 23, 2015. On that date,  
21 he's also texting with his friend Chad Newsom who says:  
22 Brie's little sister killed herself last night. Can  
23 pregnant people have Xanax? She's tore up, dude.

24 Jeff Young writes: No. It would harm the baby.  
25 He pushes back.

1           It's going to be tough the next few weeks.

2       Let's go ahead and get her on something.

3           Jeff Young writes back: Exactly. That's worse  
4       for her than taking something, but Xanax is a definite  
5       no.

6           But here's Hope Rogers' patient chart at  
7       Preventagenix another -- a month later, a reminder she's  
8       pregnant, with Xanax still listed as one of her  
9       medications.

10          And Count 5 is the prescription on May 20th. By  
11       this time, it's clear from her drug screens that she's  
12       spiking her urine, scraping a piece of her pill into it.  
13       Jeff Young knows he needs to talk to her about it, says  
14       so on that chart, but he prescribes more hydrocodone.  
15       This time, upping her dose to 120 pills, now four a day,  
16       and of course more Xanax.

17          Count 6, a month later. Here, it's Jeff Young  
18       who writes on her patient chart that she's pregnant --  
19       you see his handwriting there? -- and again ratchets up  
20       the drugs. Now she also has Percocet just before the  
21       baby is born. At this point, there is no question this  
22       child will be born with opioids in her system; Jeff Young  
23       has made sure of that.

24          And on July 17th -- you heard Hope Rogers  
25       testify that she has a tough time getting this last

1 prescription out of Britney Petway, who's Jeff Young's  
2 employee, but she got Jeff Young on the phone, Britney  
3 Petway did, and Hope Rogers walked out with the  
4 prescription. Now, Dr. Aultman told you that this  
5 prescription, like all the other, was well outside the  
6 scope of anything resembling medicine.

7 But, also, Jeff Young has even more information  
8 because she's -- because Hope Rogers has been in a  
9 hospital for -- maybe that's the preterm labor. And she  
10 calls -- and she texts Jeff Young. She says: I have  
11 nothing to fall back on.

12 This is just a couple of weeks, and she's  
13 already finished her last 30-day supply?

14 But Jeff Young kept prescribing.

15 After Hope Rogers had the baby, the problematic  
16 drug screens kept coming in over and over and over again,  
17 but Jeff Young kept prescribing.

18 You heard from -- for yourself -- how Hope  
19 Rogers left Jeff Young's clinic during this time because  
20 it was too crowded and the wait was too long. She got a  
21 DUI. She couldn't get the drugs elsewhere, and so she  
22 had to come back. Guess what? Jeff Young kept  
23 prescribing.

24 Folks, this concludes our story about Hope  
25 Rogers and the counts related to her. There can be no



1 doubt that Jeff Young knew that Hope Rogers was pregnant.  
2 He knew that these prescriptions were absolutely outside  
3 the usual course of professional practice and not for any  
4 legitimate medical purpose. He wandered between  
5 hydrocodone and oxycodone, twice upped her dose while she  
6 was carrying a baby, prescribed Xanax on the very day she  
7 texted -- he texted his friend that Xanax would harm a  
8 baby, ignored inconsistent drug screens, gave her early  
9 refills. And you heard how crossing paths with Jeff  
10 Young impacted Hope Rogers' life forever. So on these  
11 counts, 2 through 7, we ask that you return a verdict,  
12 the only verdict consistent with the evidence, which is a  
13 verdict of guilty.

14 And so let's move on to Counts 8 through 14.  
15 Counts 8 through 14 cover the undercover operations in  
16 this case. The videos, which I'm not going to replay  
17 here, you'll remember them. But they're at exhibits, for  
18 your notes -- those who are taking them -- are Exhibits  
19 28 through 33, plus 73, if you want to watch those videos  
20 again.

21 Counts 8 through 12 are the distributions to  
22 Katie Tripp. You heard her testify today [sic]. The  
23 K.S. refers to a previous married name, but we're talking  
24 about Katie Tripp who was the first undercover officer  
25 you heard from. And you remember she went in undercover

1 as Katie Crowder.

2 On her first official visit to the clinic in  
3 May, she saw someone other than Jeff Young who prescribed  
4 her tramadol, which was a level of opioids. That's not  
5 on this chart. And in Exhibit 28, you saw the first  
6 visit on June 7, 2016, in which she actually saw Jeff  
7 Young. You saw, in Exhibit 28, a video of her paying  
8 cash. And in Exhibit 29, you saw the entire interaction  
9 between Katie Tripp and Jeff Young on that visit.

10 Beyond her claims that she was a waitress and  
11 with back pain, Jeff Young knew nothing about her pain.  
12 He made no attempts whatsoever to diagnose it. He didn't  
13 warn her of any risks. She told him she hadn't bothered  
14 to fill the tramadol. She'd once gotten some hydrocodone  
15 from a friend, and it seemed to work. She had once  
16 gotten an MRI, but it didn't really show anything, and  
17 she didn't know where it was, and Jeff Young told her to  
18 bring it in so he could paper the file. He was very  
19 explicit: Just give it to me; I need something in the  
20 file.

21 This all took about two minutes.

22 And then for the next six minutes of this visit,  
23 he tried to impress her with his reality TV show. And  
24 then he wrote a prescription for hydrocodone, which  
25 Tricia Aultman -- Dr. Aultman -- told you had absolutely

1 no basis in real medicine.

2 On the second visit, patient, quote, Katie  
3 Crowder, goes back and asks for fentanyl because it,  
4 quote, worked for a friend. She still doesn't have that  
5 MRI. Jeff Young says, sure, and jumps her immediately to  
6 a 50-microgram patch of fentanyl, which Tricia Aultman --  
7 Dr. Aultman -- says that's what she uses to treat cancer  
8 patients to keep them comfortable at the end of their  
9 lives.

10 The undercover officer asks Jeff Young if she  
11 could take the hydrocodone and the fentanyl that he  
12 prescribed together. Jeff Young said it was no problem.  
13 That was way off base. According to Dr. Aultman, if she  
14 had taken those drugs together, as prescribed by Jeffrey  
15 Young -- including the fentanyl patches -- she could have  
16 died.

17 Count 10. Katie Crowder and Mr. Young have  
18 another visit on or about 8/16. Much shorter. She says  
19 she likes the fentanyl, but she still feels pain. And so  
20 without any further questions or counseling, Mr. Young,  
21 again, ups the fentanyl to 75 micrograms. This is  
22 unthinkable, said Dr. Aultman.

23 On Count 11, on or about 9/13/2016, she comes  
24 back. It's a quick visit.

25 Let's see here. Which one are we at?

1 Count 11. She comes back, and it's a quick  
2 visit. It's at Exhibit 32. And she's still kind of in  
3 pain, and so Jeff Young ratchets up the Lortab, so she's  
4 now on a deadly dose of fentanyl and more hydrocodone.

5 And you heard her in the video, folks. She's  
6 not altered; she's not slurring; she's not moving around  
7 like she's in pain. She's perky; she's happy; she's  
8 comfortable. She's very clearly not taking these very  
9 strong drugs that Jeffrey Young is prescribing to her,  
10 these very strong, high street-value drugs that Jeffrey  
11 Young is prescribing to her, but Jeffrey Young keeps  
12 prescribing them.

13 Now, Counts 12 and 13 are for the same visit,  
14 the one in October 2016. You can remember the October  
15 visit because he's inviting them to the Halloween party,  
16 the big, raging Halloween party where people are swinging  
17 from chandeliers. There's two undercover agents at this visit,  
18 that's why there's two counts: Katie Crowder and  
19 Kristina St. Laurent, the KSL that's going to be in the  
20 indictment. Kristina St. Laurent: She's undercover as  
21 Christina Norton, so you heard from her as well.

22 Jeff Young flirts a little. He explains how  
23 he's trying to make marijuana legal. He brags about  
24 insider knowledge. He invites them to his rager of a  
25 Halloween party. And by the way, he doesn't suggest that

1 they not drink alcohol while on all of these drugs.  
2 Quite the opposite. He says, you know, you should come;  
3 you should fit in.

4 Christina Norton asks for, quote, tabs, which is  
5 the street term for Lortabs. Jeff Young does kind of a  
6 cursory exam, which Tricia Aultman told you was  
7 absolutely nowhere near anything that would be  
8 appropriate to diagnose her back pain.

9 Katie Crowder walks out with more hydrocodone  
10 and fentanyl, and Christina Norton, who Jeff Young was  
11 seeing for the first time, gets oxycodone, 10 milligrams,  
12 three times a day.

13 And at Count 14, Tricia -- Christina Norton goes  
14 back in. Somebody has faxed Jeff Young a completely  
15 normal MRI for her, which says -- which he says in the  
16 video he's never looked at. In fact, ironically,  
17 according to Dr. Aultman, the only thing wrong with her  
18 in this MRI is that she's a little bit constipated. You  
19 also learned that opioids make you constipated. Anyway,  
20 he says in the video he's never looked at it, but he  
21 prescribes her more drugs. Dr. Aultman told you none of  
22 these prescriptions make any medical sense; they're not  
23 even close.

24 And if you watch the videos, you'll see that the  
25 interactions are not medicine. They're much more in line

1 with Jeffrey Young's pattern of bringing young,  
2 attractive women back to his clinic over and over again,  
3 giving them more and more drugs, grooming them, if you  
4 will.

5 A quick word about the dates: I know you've all  
6 been paying very close attention to these dates and  
7 details, which we really appreciate. You'll see in the  
8 indictment two of the dates on these counts don't quite  
9 match up. It's a -- they say, maybe, six, and it's 16 or  
10 something like that. There is a jury instruction for  
11 that.

12 You'll note, then, the indictment charges  
13 offenses were committed on or about certain dates. The  
14 government doesn't have to prove the crimes happened on  
15 an exact date. We have to prove the crimes happened  
16 reasonably close to those dates. You'll see there's no  
17 issue with that. And we've made it through all the  
18 counts.

19 So the last thing that you need to know is that  
20 for each of these counts, it will be important that you  
21 find Jeff Young committed these crimes knowingly or  
22 intentionally, that if he didn't realize he was  
23 committing any kind of crime, had a completely innocent  
24 intent, was negligent or careless, that he can't be found  
25 guilty.

1           So we have to do a little bit of diving into his  
2 mind. We have to figure out if he understood that he was  
3 acting illegally. And you'll get a lot of instructions  
4 on what that means: knowing and intentionally. But  
5 there is evidence of that, too, in spate, that he knew  
6 what he was doing was wrong, and he continued to do it  
7 anyway.

8           So you have this instruction. We, in the law,  
9 did -- they don't teach us mind reading in law school.  
10 We don't have crystal balls where we can figure out  
11 what's in people's minds. And there's just really --  
12 it's really hard to prove a defendant's -- you can't do  
13 it because nobody can read another person's mind. We  
14 still haven't figured out how to do that. But their  
15 state of mind can be proved indirectly from the  
16 surrounding circumstances, things like what the defendant  
17 said, what the defendant did, how the defendant acted,  
18 and other facts and circumstances in evidence that show  
19 you what was in the defendant's mind. So just think  
20 about the evidence through that lens in this case.

21           Jeff Young is prescribing drugs to help a player  
22 out, to lure women for sex, to impress a VIP, to trade  
23 for marijuana and tattoos, to keep a bodyguard around,  
24 for access to party with rock stars, to get VIP access to  
25 clubs, to get police information about his enemies and

1 about himself.

2           You saw how Jeffrey Young groomed women to draw  
3 them into his practice. And although he didn't make  
4 sexual advances on the undercovers, you can watch the  
5 videos. He was flirty, friendly; invited them to a  
6 raging party at his house. You can see he let them come  
7 together, a couple of girls together, each driving from  
8 wildly different parts of the state, all to get  
9 controlled substances.

10           You saw his M.O. in his text messages, keep them  
11 coming back. Once they're hooked, ask for what he wants.  
12 You saw that in the video.

13           And folks, he's a medical professional. He is a  
14 smart and previously well-respected nurse practitioner.  
15 And Dr. Aultman told you these prescriptions weren't even  
16 close.

17           Folks, this was blatant drug dealing, and Jeff  
18 Young knew it, and we know he knew it because he lied to  
19 cover it up. People don't lie to cover up perfectly  
20 acceptable behavior, but Jeff Young lied. He lied to  
21 three different investigators at the medical board when  
22 they interviewed him. He papered files. He got a stamp  
23 so he could forge a signature from his supervising  
24 physician. He lied about having sex with Courtney  
25 Howell. He told them he never put people on more than



1 one opioid. He said he hated prescribing Xanax, and he  
2 never had a break in his supervision. He told them he  
3 consistently did exams; he fired patients if they came  
4 back with multiple inconsistent drug screens regularly;  
5 he did this and so on. And you saw in the evidence how  
6 it contradicts statement after statement after statement.

7 And speaking of supervisors, he lied to  
8 Dr. Alperovich saying he was operating a cardiovascular  
9 prevention and family medicine clinic. He wasn't. He  
10 lied about getting electronic medical records and about  
11 discharging patients who had tested positive for drugs.  
12 He even lied in little ways to his friends and supporters  
13 or if -- telling them the filming company came to him,  
14 for example, when, in fact, he paid them -- right? -- to  
15 produce his reality show. But worst of all, he lied to  
16 his patients.

17 There's a -- there's a -- I'm going to --  
18 there's an old proverb here, and it's that you can't --  
19 you can't hide fire by wrapping it in paper. Maybe that  
20 paper, you know, covers up the fire for a second, but  
21 then the fire burns right through. Paper spreads the  
22 fire. The paper makes the fire worse.

23 Jeff Young tried to hide his unlawful  
24 prescribing literally by wrapping it in paper, by  
25 creating false medical records that made it look like he

1 was practicing medicine when he clearly was not, and that  
2 paper just spread the fire. Because of that paper, all  
3 the trappings of the medical clinic, you know, people  
4 trusted him because he said he was -- he said he was  
5 their medical care provider. And that just made the  
6 problem worse.

7           These patients believed they were getting  
8 medical care, when, in reality, they were getting used  
9 for their insurance, for their money, for their access,  
10 and for their bodies.

11           And that brings us to the true tragedy of this  
12 case, which is the regret of what could have been. You  
13 see, Jeff Young might have been a good practitioner, and  
14 there were plenty of sick people in Jackson that wanted  
15 and needed real medical care. You heard from two of  
16 them: Tricia Stansell and Hope Rogers.

17           And he even had a good concept, like a guy you  
18 could relate to, who listened, who paid attention to the  
19 real issues, who treated the whole problem. He  
20 understood that's what medical care was. That's what he  
21 told people he was doing. That's proof that he knew --  
22 that he knew what medical care was and should be.

23           Hope Rogers needed care. She testified to you  
24 she was an addict. She was a victim of abuse. She'd  
25 gotten cut off from pain meds after a DUI. And she had a

1 good relationship with Jeff Young. Hope Rogers testified  
2 that if there was anyone on the planet that could have  
3 talked her into rehab, that person was the defendant,  
4 Jeffrey Young. But instead, he just gave her more drugs.

5 She testified she, quote, go in, get your  
6 prescription, and leave, she explained. And not just  
7 her. Patients were elbow to elbow, she said, in the  
8 waiting room.

9 Jeff Young was not an unconventional provider  
10 with a special touch any more than he was a rap star. He  
11 wasn't listening to find out what was wrong with his  
12 patients. He wasn't treating their conditions. He was  
13 letting them down; he was making them worse; he was  
14 dealing drugs. And so we ask that you return verdicts  
15 consistent with that evidence: guilty on all counts.

16 **THE COURT:** Thank you.

17 And for the defense, Mr. Ferguson, you may  
18 proceed.

19 **MR. FERGUSON:** Thank you, Your Honor.

20 Broken, playing a character, but he was always a  
21 practitioner. Now, you may not think he was a good  
22 practitioner, and you might not agree with his decision  
23 making, but at all times in this case, Jeff Young was  
24 operating under the license given to him by the state of  
25 Tennessee to be a nurse practitioner, to make medical

1 decisions, and to prescribe medications.

2 Government's right. You heard, at some point in  
3 his life, Jeff Young was highly respected. He's smart.  
4 He knew what he was doing, and he had the world at his  
5 feet as a nurse practitioner, as a good nurse  
6 practitioner, as a smart nurse practitioner. But what do  
7 you know happened?

8 So many times we see this. Even their own  
9 expert talked about why it's so important for medical  
10 providers to take care of themselves and to seek help  
11 when they are going through hard times, depression,  
12 drugs, or alcohol. He got into a horrible divorce, and  
13 it spiraled him out of control. That's what Ms. Goslee  
14 told you, the first witness in this case, is that she  
15 knew Jeff, and she watched him spiral.

16 But there's an additional problem with Jeff  
17 Young's spiraling out of control through the divorce.  
18 That's -- the second part of this is taking on the  
19 persona of the Rock Doc. Be popular? To be famous? Or  
20 to hide the pain and the trauma that he's going through,  
21 to hide that under this ridiculous, ridiculous character:  
22 come sail away with me, the Rock Doc, the rapper, with  
23 Puffy K, his buddy, by his side? It's all signs and  
24 symptoms of the problems that were in his head because of  
25 what he was going through and because he was out of

1 control.

2 Third part of that: You've heard testimony from  
3 Ms. Goslee and Ms. -- Ms. Gutgsell that he was expanding  
4 his practice too quickly, in this manic state of the  
5 Rock Doc. People that he communicated with and connect  
6 with, he, all of a sudden -- on top of everything that's  
7 going on his life that's got him out of control -- that  
8 he wants to expand a practice down to downtown Jackson,  
9 the downtown office, and another one to what? It was  
10 Trezevant or wherever in Tennessee. And he's expanding  
11 at a rate that, at one point -- and I think the testimony  
12 was he was seeing up to a hundred.

13 After those two shut down, everybody  
14 consolidates back to the mother ship, up to a hundred  
15 people a day, in that manic state he's in of the Rock  
16 Doc, that he's going to do it all himself. He's trying  
17 to see a hundred patients a day, when Dr. Aultman told  
18 you it's 25, 30 max. He's seeing three times the number  
19 of patients that it's even possible.

20 You think he's doing a full exam on a hundred  
21 people, or is it just he's going into the room, listening  
22 to their complaint, writing a prescription, moving on to  
23 the next patient, trying to hit that 50, 60, hundred  
24 patients a day?

25 See, the problem here for the government is Jeff

1 Young -- they have to prove to you beyond a reasonable  
2 doubt, and that reasonable doubt is that they have to  
3 convince you that he was intentionally going above and  
4 beyond his license. And it's very specific language in  
5 the jury instructions, that it has to be without a  
6 legitimate medical purpose and outside the course of  
7 professional practice, that -- I asked Dr. Aultman what  
8 are opioids for. Treating pain. What was he doing? He  
9 was hearing the complaint of pain and prescribing  
10 opioids. That's the medical purpose of the drugs in  
11 which we're here for today.

12           Outside the course of professional practice.  
13 Where was he doing this? He was doing this at his  
14 professional practice because he's a nurse practitioner  
15 with a clinic, and he's running through those patients:  
16 Oh, you have back pain. Let's try this. I'll see you in  
17 a month. You tell me how it works for you. Oh, it  
18 didn't work for you? Well, here, let's try this one  
19 until we can find what works for you.

20           What did he tell a nursing board? I'll titrate  
21 it. I will only titrate it twice, meaning he starts out  
22 with a prescription, changes it, changes it. He even  
23 told the nurse -- or the nursing board that that's his  
24 practice: We'll start you out on something. Come back  
25 in and tell me how it works, and we'll go from there.

1           That's within his practice. That's not  
2 intentionally becoming a drug dealer. That may be, quite  
3 frankly, being a bad practitioner, and there's jury  
4 instructions that we'll talk about in a few minutes about  
5 that. Because the jury instructions this Court's going  
6 to give you will tell you that carelessness, negligence  
7 is not sufficient to convict on any charges in this case.  
8 This is not a malpractice case. This is not a negligence  
9 case. This is not he was careless. This is he intended;  
10 he's out of control. He's seeing hundreds of patients a  
11 day. He's spiraling.

12           The proof was his divorce attorney Mr. Donahoe  
13 was there on a weekly basis. He's one of those back-door  
14 patients. But he's there to discuss the divorce. And  
15 you heard it was ugly. I think the -- I think the word  
16 was the wife was giving it as good as she was getting it.  
17 And they were getting it and giving it to each other, and  
18 it was all over social media. I think it was -- Topix, I  
19 think, was what they were referring to they use in  
20 Jackson. Facebook.

21           So intentional, knowing, it's not here in this  
22 case, ladies and gentlemen.

23           The government put on Ms. Gutgsell. Can't spell  
24 her name. She discussed with you Dr. Alperovich and that  
25 he actually came in and reviewed the records. Jeff sat

1 down with him. And you've heard from him also; he  
2 testified. And that he had questions about Jeff's  
3 prescribing habits and that Jeff explained to him why he  
4 did what he did and that, to him, to the physician, the  
5 doctor, the M.D., it made sense. He signed off on the  
6 jackets. Problem was it just took a long time because he  
7 was going through each file individually with Mr. Young.

8 Now, at some point, he decided that he didn't  
9 want to continue to be a preceptor because he was afraid  
10 of the prescribing habits. He never stopped them. He  
11 never reported Jeff. He never called the police, never  
12 called the nursing board. He just said, I'm  
13 uncomfortable going forward with this agreement.

14 The problem with that is he had already told  
15 Jeff -- he had already signed off on those files, again,  
16 because Jeff has to have an M.D. sign off on those files  
17 telling him that everything's okay. And that's what he  
18 got from Dr. Alperovich, until he said, I'm  
19 uncomfortable; I think you're overprescribing.

20 But -- and then what do we find out from  
21 Ms. Gutgsell? Jeff thinks he was smarter than anyone  
22 else. And why would Jeff think he's smarter than anyone  
23 else? Because at this point he's out of control. Again,  
24 spiraling. He's the smartest person in the room. He  
25 knows everything. He knows what's best for the patients,



1 his patients, which means he's not intentionally trying  
2 to give them illegal drugs. It's his good faith belief  
3 that he's helping people. No matter what any other  
4 doctor says, Jeff Young thought he was helping people,  
5 wanted to help people.

6 I mean, if you want to be a drug dealer, can you  
7 think of an easier way to be a drug dealer than trying to  
8 see a hundred patients a day? Just go down to the  
9 border, buy the drugs, bring them back, sell them on the  
10 street corner. As the government's told, they're really  
11 expensive. But instead, you're running a full-service  
12 healthcare clinic with multiple employees, hundreds of  
13 patients a day, a billing department, a referral  
14 department, nurses, X-ray, and everything else in there.  
15 You're having to pay payroll; you're having to pay rent;  
16 you're having to pay insurance, malpractice, license.  
17 It's a really expensive way to become a drug dealer.

18 I found it interesting that Dr. Alperovich, who,  
19 at some point, was the indicted co-conspirator and is now  
20 not indicted or is not -- is not -- well, actually he's  
21 not the conspirator because what did I ask him? Do you  
22 have an agreement with Jeff?

23 Again, you'll get the jury instructions. Look  
24 at them carefully. What is a conspiracy? It's an  
25 agreement; that's it. It's not -- it's not the illegal

1 acts. The illegal acts are separate crimes. Selling  
2 drugs to a pregnant woman, that's a separate crime.  
3 Selling the drugs to an undercover officer, that's a  
4 separate crime. Conspiracy is a crime. It's not what we  
5 call -- we call them substantive acts, the substantive  
6 acts are the selling, the drug sales. But the  
7 conspiracy -- the conspiracy itself is a crime, and  
8 conspiracy is that agreement. When two people agree to  
9 break the law, it's that agreement among the two people.  
10 That's the crime; that's the conspiracy. The government  
11 has to put on proof that Jeff conspired with one or more  
12 persons. Well, Dr. Al very clearly said, no. Nope, no  
13 agreement.

14 And Dr. Rudin hasn't testified.

15 And the government hasn't put on any proof of  
16 any agreement among any parties with Jeff. That's the  
17 conspiracy charge; that's Count 1, where there is no  
18 proof of any agreement. And the government will tell  
19 you, and I'll tell you; it can be -- it can be spoken  
20 or -- unspoken or spoken. It can be in writing or not in  
21 writing, but it's got to be an agreement. There's got to  
22 be proof that two or more people agreed, and in this  
23 case, it's to distribute drugs to the patients.

24 Nobody's come in here and testified that they  
25 were a co-conspirator. Not a single person have said

1 that they were a co-conspirator.

2 Counts 2 through 7 with Hope Rogers -- or now  
3 it's Arment because I think she told us was her last  
4 name. But Hope Rogers in the indictment, that's the  
5 illegal dispensing of narcotics to a pregnant woman.  
6 That one was interesting.

7 I want to talk to you about what we learned  
8 while we were in trial with that. I know we did the --  
9 Defense didn't put on any proof, and I know I didn't ask  
10 a lot of questions. But I hope that when I did ask  
11 questions, they were very pointed and that they were  
12 illustrative or illustrate the problems with the  
13 government's case. I didn't want to beat around the  
14 bush. There are certain huge problems within this case.

15 And Hope Rogers. She came to Jeff already  
16 prescribed hydrocodone. She was already on pain  
17 medication before she came to Jeff. How many times did  
18 we have to ask? Because the government didn't put it on,  
19 and they didn't tell you. We had to put it on so that  
20 you would know because I would think you would want to  
21 know this, when it's your duty to determine my client's  
22 guilt or innocence. Wouldn't you have liked to have  
23 known that they were already on pain medication before  
24 they came to see Mr. Young?

25 I know we -- there was some talk about

1 continuity of care, but that's exactly what we're talking  
2 about here. If you go and you leave one doctor and you  
3 go to the next doctor and you're on medication, you kind  
4 of expect that that prescription continues. I agree with  
5 Dr. Aultman. You still have to do a -- an independent  
6 evaluation, but part of that independent evaluation is  
7 looking to see what other doctors have done. What? You  
8 expect your doctor -- I'm on heart medication. I go see  
9 another doctor, and he goes, oh, you don't need that  
10 heart medication. I'm going to go find another doctor.  
11 But when you're on hydrocodone and you go to see another  
12 doctor to establish that doctor as your primary care  
13 physician, you're going to be prescribed the same  
14 medication.

15 So Hope Rogers started out on the same  
16 medication that she was already on.

17 The government put up, just a few seconds ago,  
18 the second critical, critical piece of evidence that they  
19 didn't tell you about. We had to ask the question.  
20 Dr. Aultman, if you're saying you can't give hydrocodone,  
21 you shouldn't give hydrocodone and Xanax in combination  
22 with each other when you're pregnant, why is her OB  
23 prescribing her hydrocodone at the hospital while she's  
24 pregnant?

25 Because she's on hydrocodone. When she's in

1 pain, that's what doctors prescribed her. Her own OB  
2 prescribed her the same drugs that the government wants  
3 to try to convince you was illegal. But you know that  
4 Dr. Walker -- it's in the notes. You just saw it again  
5 on the board, and we put it on in the cross-examination.  
6 Dr. Walker, at the ER in Jackson, prescribed her  
7 hydrocodone, the same drug. Well, he didn't prescribe  
8 her Xanax. Well, he knew she was on Xanax because it's  
9 on the PMP.

10 More importantly, Dr. Aultman. I know we're  
11 talking about a black box warning. Again, completely  
12 left out. They -- the government told you about the  
13 black box warning, but they didn't tell you that, in  
14 times, it might be necessary to prescribe those drugs for  
15 pregnant women, and if you do, the standard of care would  
16 be to do what? High-risk OB.

17 What did Hope Rogers tell you she had? A  
18 high-risk OB because her medical doctors, not her nurse  
19 practitioner -- her medical doctors knew what she was on  
20 and knew to take the steps necessary in order to make  
21 sure, as she told you, she had a healthy, beautiful baby  
22 girl.

23 And you got to see the photos of her at birth.  
24 Child wasn't injured. She received the medical care  
25 that, in Jeff Young's opinion, medical opinion, was

1 reasonable and necessary and that had two other -- at  
2 least two other physicians who were aware of it, one of  
3 them who was also prescribing the exact same drug.  
4 There's absolutely no basis in this evidence for Counts 2  
5 through 7. There's just no way, unless you sit here and  
6 say Dr. Walker was prescribing her drugs illegally.

7           The final counts with the two undercover  
8 officers, again, complaining of pain, saying they had  
9 tried other medications. Dr. Aultman said, well, you  
10 know, yeah, it's unfortunate, but patients really do come  
11 in and say, well, I tried, you know, somebody else's  
12 medication, and it worked. And I -- you know, I probably  
13 should tell them that that's illegal, and you can get --  
14 but -- but that happens. That's fairly common. We know  
15 that's common. We've all done that.

16           Wife has a prescription bottle, doesn't use it  
17 all, Flexeril or some muscle relaxant. And you're like,  
18 oh, I hurt my back working out in the yard; I'll take one  
19 of these. We all do it. And we go to the doctor, and  
20 what do we do? Well, you know, I tried my wife's  
21 Flexeril, and it really helped. We get the prescription.  
22 That's all it takes.

23           These two young ladies -- and I submit to you  
24 the proof is -- or at least the circumstantial evidence  
25 is they picked women with the hopes that they were going

1 to somehow get it on tape Jeff trying to flirt or hit up  
2 these women. He didn't. The most he did was, hey, I'm  
3 having a Halloween party; you should check it out. And  
4 that was the extent of it. No exchange of phone numbers,  
5 no address, no date.

6 But they came in with their own individual  
7 complaints, which is what patients do. They come in;  
8 they have symptoms; they have complaints. You've seen,  
9 and you can look at them in the back there. Have a full  
10 file, records that had been written up, blood pressures.

11 So they've done -- they come in; they check in;  
12 they're seen by somebody in the clinic to do the workup,  
13 which is, well, let's go get on the scale; let's take  
14 your blood pressure. What are your problems? Let me  
15 write down -- anything I need to tell the doctor today,  
16 why you're here?

17 And then what happens? Jeff Young walks in the  
18 room. Hey, I understand you have lower back pain, da,  
19 da, da. You're -- in fact, the St. Lawrence (phonetic),  
20 the second CI, actually had a PMP. And when you see Jeff  
21 going through the files, the PMP had been in the file, so  
22 he would have known that she was currently being  
23 prescribed the medication, that another physician had  
24 prescribed her that medication, and, again, continuing  
25 that line of care.

1           Now, again, you don't have to like his  
2     prescribing. You don't even have to like him. I mean,  
3     that's -- this is not - this is not a "like or dislike  
4     Jeff Young" kind of moment. This is whether or not what  
5     he was doing was illegally outside the course and scope  
6     of his usual practice, dispensing and becoming a drug  
7     dealer, going beyond his license and taking on that role  
8     as the drug dealer.

9           No. He's seeing patients, again, rushed, not  
10    putting the time into it because it's absolutely  
11    impossible to spend the appropriate amount of time with  
12    the patients with that caseload. Listening to the  
13    symptoms, asking them what helped, what didn't help.  
14    Well, let's try something else. I'll see you back in a  
15    month; we'll see how that works. Too strong? Too weak?  
16    About right? Okay. Good. Let's just keep it there.  
17    That's being a -- that's being a healthcare professional.  
18    That's in his practice. He's not intentional.

19           Count 1. There's no agreement.

20           Hope Rogers: Absolutely fine. Had two doctors  
21    on it doing the exact same thing. Everything was being  
22    handled professionally.

23           Undercovers: At worst -- at worst, maybe just  
24    carelessness, if you think it was wrong. That's if you  
25    think it's wrong.



1 Carelessness: Maybe if somebody had gotten  
2 injured, it might be a negligence claim, a malpractice  
3 claim, but it's not a drug dealer claim. It's not. It's  
4 not a crime.

5 Again, healthcare providers: We're talking  
6 about how we treat our healthcare providers. It's not  
7 that they prescribed drugs. They're supposed to  
8 prescribe drugs. That's what their job is it to do.  
9 They have a license from the DEA to prescribe drugs. It  
10 has to be so far beyond the scope of that license that  
11 they've completely disregarded their entire practice of  
12 medicine. It cannot be for a medical reason. It's got  
13 to be outside of the scope.

14 It's not your job to shut his practice down.  
15 It's not your job to claim that he's negligent or that he  
16 committed malpractice. Your job is to determine whether  
17 or not the government has proven that he's become a drug  
18 dealer. You don't have to like him. You don't have to  
19 agree with him. Look, you don't even have to feel sorry  
20 for him, if you think he was out there and purposely  
21 became this buffoon of a character with his horrible  
22 rapping and hanging out with women.

23 Speaking of the women, I'll leave you with this:  
24 The government talks a lot about his use of the  
25 prescription pad and sex. I agree with that. I would,

1 too, if I were a prosecutor. I'd do everything I could  
2 to tie those two together, right? Well, he was  
3 prescribing drugs for sex. Oh, I'd go for that. That's  
4 all we would talk about. We wouldn't talk about anything  
5 else. No Hope Rogers, no undercover agents. Here's the  
6 problem.

7           They didn't charge him with a single count of  
8 writing prescription to a woman he had sex with, not one.  
9 It's not charged. They didn't put on a single woman who  
10 said, oh, yeah, I was only having sex with Jeff Young  
11 because he was writing me prescriptions. Not one. Not a  
12 single witness.

13           You'll see in the indictment, when you take it  
14 back there -- and it's -- the indictment's long, and I'm  
15 going to be real honest with you, there's a lot of paper  
16 in this case, but do look at the indictment. The  
17 indictment does allege that he was using his prescription  
18 pad for sex, but it's in the conspiracy count. And he's  
19 not charged in the conspiracy count with using his  
20 prescription pad for sex. It's saying that part of the  
21 criminal agreement between him and someone else, part of  
22 that was for this purpose.

23           If you find that he was or if you believe that  
24 he was using his prescription pad for sex, there's no  
25 count in the indictment because Count 1, you must first

1 determine if there was an agreement between Jeff Young  
2 and somebody else for him use the prescription pad to  
3 have sex. So it's not there. It's in the conspiracy,  
4 and there is no conspiracy.

5 I didn't write the indictment, but it's you that  
6 have to follow the indictment. There are no substantive  
7 counts in this indictment based on that allegation. It's  
8 within and contained within the conspiracy count, and the  
9 conspiracy count, I believe you'll find, is not supported  
10 by the proof.

11 Ladies and gentlemen, it's been a remarkably  
12 quicker trial than I expected. I really appreciate that  
13 y'all have sat through this. The days have been long.  
14 You have more work to do.

15 On behalf of Jeff Young, we thank you and  
16 appreciate your time. I'm asking that when you go and  
17 deliberate, you look at the indictment; you look at the  
18 counts, and you return the verdict that this proof  
19 requires.

20 And, again, this proof was based on the  
21 government's witness telling you that they put on the  
22 evidence -- they didn't put on evidence that wasn't  
23 relevant to what they were trying to prove. I believe  
24 that through our cross-examination we have been able to  
25 show you that there is other proof to this case that will

1 and provide you facts and circumstances to acquit  
2 Mr. Young of all counts in this case.

3 Their forty-, fifty-thousand-dollar expert  
4 witness proved to you that Hope Rogers was treated  
5 appropriately and had the proper care with a high-risk  
6 OB. No conspiracy. Nothing in this case that rises  
7 above carelessness.

8 The jury instructions the Court gives you, when  
9 it talks about -- when it talks about what your duty is  
10 to the proof -- gives you a good faith instruction in  
11 your jury instructions. And at the bottom, please note  
12 negligence and carelessness, foolishness are not  
13 sufficient to convict.

14 Return the verdict of not guilty. Return the  
15 verdict of not guilty.

16 Thank you, ladies and gentlemen.

17 **THE COURT:** Thank you, Mr. Ferguson.

18 We'll finish.

19 **MR. FERGUSON:** Thank you, Your Honor.

20 **MS. PAYERLE:** Thank you, Your Honor.

21 Okay. Good afternoon. I'm going to be very  
22 brief. My job here is just to address some of the things  
23 that Mr. Ferguson just told you.

24 The framework for doing that is probably best  
25 explained in the jury instructions about reasonable

1 doubt, just to give you some framework. It's very useful  
2 instruction, and it says while the government's burden of  
3 proof is a strict or heavy burden, it is not necessary  
4 that the defendant's guilt be proved beyond all possible  
5 doubt. It's only required that the government's proof  
6 exclude any reasonable doubt.

7           Possible doubts or doubts based purely on  
8 speculation are not reasonable doubt. A reasonable doubt  
9 is a real doubt, a doubt that is based on reason and  
10 common sense after careful and impartial consideration of  
11 all the evidence.

12           You-all are here. We have this jury system  
13 because you bring something to this courtroom that is so  
14 much more important than any of the law degrees or  
15 special training or medical licenses or anything that are  
16 sitting here, and that is your common sense. That's what  
17 you bring, and that is why it's so important that you  
18 exercise it when we're thinking about the defenses.

19           So I'm going to just quickly run through them  
20 and sort of view them just through the lens of common  
21 sense. So the first is just that there's been no  
22 conspiracy; there's been no agreement.

23           As we all talked about, through the lens of  
24 common sense, criminals don't get together in dark rooms  
25 and conspire with tinfoil hats to commit crimes and put

1 that in writing and sign a contract and so forth. What  
2 they do is they help each other through actions.

3 So Kristie Gutsell, the office manager,  
4 testified that she pled guilty to agreeing to help Jeff  
5 Young in his criminal purpose. She said: I helped Jeff  
6 prescribe controlled substances by keeping the clinic  
7 open, loaning money to pay employees, keeping the door  
8 open. He couldn't have done that if I didn't help him

9 And she pled guilty to aiding and abetting.

10 Dr. Alperovich: Although, he didn't sort of cop  
11 to the exact words of conspiracy, again, people rarely  
12 do, but they said -- he said: I pretended to be his  
13 supervisor.

14 He said he lied to the nursing board when they  
15 investigated. He said he signed charts he knew to be  
16 problematic. And he, too, admitted that Mr. Young  
17 couldn't have done it without him.

18 And Dr. Rudin: You heard about him. He's the  
19 last preceptor through the last half of 2016. Jeff  
20 Young's buddy who lived in Chicago, who never set foot in  
21 the clinic, let Jeff Young use his name as supervising  
22 physician. And for that reasons -- reason -- in a text  
23 with Kristie Gutsell at Exhibit 17, Jeff Young calls  
24 him, quote, the perfect preceptor.

25 Jeff Young needed these people. He needed these

1 people. These are just three. You may find others that  
2 you have heard from or heard about. But the evidence was  
3 that Jeff Young needed people to help him, to agree with  
4 him, to under -- they all saw. They all understood what  
5 he was doing here. And they agreed with him, and they  
6 helped him, and that's sufficient for a conspiracy.

7 The second thing you heard Mr. Ferguson say is  
8 that he was broken and overwhelmed. Let's take a look at  
9 whether that matches up through a lens of reasonableness  
10 with the evidence.

11 The fact is, folks, you got to meet Jeff Young  
12 during this period of time in his life because you saw  
13 him on video, and you saw him -- and you heard his voice  
14 in the recordings with Shirley Pickering. So you can  
15 actually see him and hear him for yourself during this  
16 time. You heard him on the video with Katie Crowder and  
17 Christina Norton. He was cool; he was calm; and he was  
18 collected. He was excited about his TV show. He was  
19 laughing.

20 You heard him in his interview with Board  
21 Investigator Shirley Pickering lying with ice in his  
22 veins, perfectly coherent about what the rules were and  
23 lying smoothly that he was following them.

24 You heard from Daniel Rogers. Mr. Young said:  
25 Pain's the plan. We're going to get people in here month

1 after month. That's where the money is.

2 And you heard that when Dr. Alperovich called  
3 him in March of 2016 to say, hey, what's all this  
4 internet nonsense?

5 What did Jeff Young say? Did he say, gosh, I'm  
6 just so overwhelmed by my marriage that I can't help  
7 myself, my divorce?

8 He said -- he said: This is my marketing  
9 strategy. This is how I'm getting people into the  
10 clinic. It's working.

11 Jeff Young knew what he was doing. He  
12 understand -- he understood that controlled substances  
13 were the way to get what he wanted.

14 And Mr. Ferguson told you that, you know, he was  
15 just a bad practitioner.

16 This is really where your common sense is going  
17 to come into play, folks. There's lots of drugs that  
18 doctors can prescribe: birth control, diabetes  
19 medication, blood pressure, heart meds. It's not like he  
20 was just writing those prescriptions because he didn't  
21 have time to spend with his patients. It's not like it  
22 takes any longer to write a prescription for birth  
23 control or heart meds. It's no accident he was  
24 prescribing controlled substances, addictive drugs.

25 Cyndal Story was selling those drugs. Whitney



1 Henley was doing drugs at his house. You can see that in  
2 the text messages. Keith Moffit needed to get past  
3 detox. You think Amy Sanders would've been sleeping with  
4 him if he was prescribing her all the heart medication  
5 she wanted?

6 And that brings me to the role of sex for drugs  
7 in the indictment. Mr. Ferguson said that if -- there's  
8 no count about sex for drugs. Okay. Common sense again,  
9 folks. He also said there's no evidence that Mr. Young  
10 understood what he was doing was wrong, and that is the  
11 evidence. The evidence -- everybody understands it's  
12 wrong to trade sex for drugs, and he understood that,  
13 too. Right?

14 So that's part of the evidence, that he  
15 understood.

16 Look, I'm not prescribing these right. I'm  
17 abusing my prescription pad. I'm putting these drugs  
18 into the community: That's what you can use to re-anchor  
19 yourself when you're thinking about, what did Mr. Young  
20 think while he was doing all of this?

21 And then last, I want to talk quickly about  
22 continuity of care. Katie Crowder wasn't getting  
23 continuous care. She'd never had an opioid before in her  
24 life. Remember the undercover? She had a perfectly  
25 clean PMP. Dr. Aultman said she was opioid naive, and he

1     prescribed her hydrocodone and fentanyl in her first,  
2     like, three visits.

3             With Hope Rogers -- again, I want you to view  
4     this through the lens of common sense. Mr. Ferguson, I  
5     believe, said that because her OB/GYN, while she was in  
6     the hospital for preterm labor, prescribed her three  
7     days' worth of hydrocodone to take in the hospital --  
8     Mr. Ferguson said this was, I believe, two docs doing the  
9     exact same thing. That's not the exact same thing as  
10    what Jeff Young was doing. You guys saw that for  
11    yourselves.

12            Through the lens of common sense, prescribing  
13    somebody some pain medications while they're in the  
14    hospital under the -- you know, where they can be  
15    examined, where they can be monitored, where they can  
16    evaluate that person's level of pain and the  
17    appropriateness of it is not the same as prescribing them  
18    30, 90, 120 pills of hydros -- hydrocodones month after  
19    month, next to a Xanax prescription, with no actual  
20    diagnosis to explain why you're doing it. It simply  
21    isn't the same thing.

22            And so we ask that you bring your common sense  
23    to bear on these questions. The evidence is exactly what  
24    it looks like. Jeff Young absolutely understood what he  
25    was doing was wrong. He did it over and over again. He

1 did it for years, and that's why we stand by our request  
2 that you bring back a verdict of guilty on all counts.  
3 Thank you very much.

4 **THE COURT:** All right. Thank you very much.

5 I think you've heard all of the proof, and  
6 you've heard all the arguments now. Now it's my fun task  
7 to read the instructions to you. First, I need to ask if  
8 anyone needs a break before we do this.

9 **THE JURY:** I do.

10 **THE COURT:** Okay. I figured I'd get at least  
11 one. And we're getting close to the noon hour. Probably  
12 in the next 10 minutes or so, your lunch is going to be  
13 ready for you. So it's going to take me about 30, 40  
14 minutes to read this. I think we're going to go ahead,  
15 and I'll read this to you after lunch, after the lunch  
16 break.

17 We're a few minutes before noon, so we will pick  
18 this up at -- we'll just make it right at 1:00, 1:00.  
19 That way -- and then I'll be ready to give this to you,  
20 and then the jury can begin your deliberations.

21 Not quite ready yet as far as the notes are  
22 concerned; still leave them in your chairs. Don't  
23 discuss. We're almost done. And I'm going to go ahead  
24 and excuse you into the jury room for break and then also  
25 for lunch.

1 (Jury out at 11:51 a.m.)

2 **THE COURT:** Okay. We'll be down for a little  
3 over an hour. See everyone at 1:00, and we will conclude  
4 at that time, let the jury start deliberating.

5

6 (The morning session concluded at 11:51 a.m.)

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**C E R T I F I C A T E**

I, LASHAWN MARSHALL, RPR, LCR, do hereby  
certify that the foregoing 84 pages are, to the best of  
my knowledge, skill, and abilities, a true and accurate  
transcript from my stenotype notes of the Jury Trial  
proceedings on the 31st day of March, 2023, in the matter  
of:

United States of America

vs.

Jeffrey W. Young, Jr

Dated this 2nd day of April, 2023

S/ Lashawn Marshall  
Lashawn Marshall, RPR, LCR  
Official Court Reporter  
United States District Court  
Western District of Tennessee